

LANGLEY & BANACK, INCORPORATED
745 E. Mulberry, Suite 900
San Antonio, Texas 78212
Telephone: (210) 736-6600
Telecopy: (210) 735-6889
DAVID S. GRAGG
Texas Bar No. 08253300
NATALIE F. WILSON
Texas Bar No. 24076779
E-mail: dgragg@langleybanack.com

Attorneys for Wal-Go Associates LLC

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:	§	
SEARS HOLDINGS CORPORATION,	§	CHAPTER 11 CASE
<i>et al.</i>¹,	§	
	§	CASE NO. 18-23538 (RDD)
	§	
DEBTORS.	§	(Jointly Administered)
	§	

WAL-GO ASSOCIATES LLC'S CURE CLAIM OBJECTION
FOR STORE 9122 (WARSAW, INDIANA)

TO THE HONORABLE ROBERT D. DRAIN, UNITED STATES BANKRUPTCY JUDGE:

Wal-Go Associates LLC ("Wal-Go") files this Objection to the Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction [Docket No. 1731] (the "Cure Notice") and in support thereof would show as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); Service Live Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); Max Serv, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); My Gofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); Star West, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

I. BACKGROUND

1. On October 15, 2018 (“Petition Date”), Sears Holdings Corporation and several of its affiliates, including Kmart Corporation, filed voluntary petitions under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their affairs as debtors-in-possession under 11 U.S.C. §§ 1107 and 1108.

2. As of the Petition Date, Wal-Go was the landlord and Kmart Corporation (“Debtor”) was the tenant under a lease of nonresidential real property located in Warsaw, Indiana (Kmart Store No. 9122) dated as of April 27, 1976, as amended and modified from time to time (“Lease”). C&W Manhattan Associates was the original lessor, the Lease was subsequently assigned and is currently held by Wal-Go.

3. On January 18, 2019, the Debtors filed and served Wal-Go with its *Cure Notice*, including amounts the Debtors believe were required to cure all defaults then existing under such contracts to be assumed (the “Cure Amounts”).

4. The Debtors indicated in the Cure Notice that they intend to assume the Lease with Wal-Go (the “Proposed Assumed Contract”).

5. Pursuant to the Cure Notice, the Debtors identified \$0.00 as the amount which it alleges to be owing Wal-Go under the Proposed Assumed Contract.

6. Wal-Go agrees to the assumption of Proposed Assumed Contract with the Debtors; however, Wal-Go disputes the Proposed Cure Amount in the Cure Notice. Wal-Go’s books and records reflect a cure amount is not less than \$54,808.20. Please see the attached Exhibit A.

II. OBJECTION TO CURE AMOUNT

7. As of the Petition Date, Wal-Go was the landlord and Kmart Corporation (“Debtor”) was the tenant under a lease of nonresidential real property located in Warsaw,

Indiana (Kmart Store No. 9122) dates as of April 27, 1976, as amended and modified from time to time (the "Lease"). Wal-Go has no objection to the assumption of the Lease provided the proper cure amount is paid.

8. The categorical breakdown of the monetary cure claim is as follows: Unpaid pre-petition real estate taxes relating to the second half of calendar year 2017 due under the Lease: \$54,808.20. See Exhibit A, attached.

9. Pursuant to 11 U.S.C. § 365(b)(1)(A), the Debtors must cure any defaults under the Wal-Go Lease in connection with any proposed assumption, as well as provide adequate assurance of future performance. In this case, Debtors' Proposed Cure Amount of \$0.00 fails to cure the existing defaults of the Wal-Go Lease, as is required under Section 365 prior to assumption.

10. The correct cure amount is \$54,808.20 for prepetition real estate tax payment defaults under the Lease. As a result, under 11 U.S.C. § 365(b)(1)(A), in order to assume the Wal-Go Lease, Wal-Go must receive a cure payment of at least \$54,808.20. Otherwise, the Lease cannot be assumed pursuant to Section 365.

11. This Cure Claim Objection is without prejudice to the fact that other and additional cure claim amounts (a) may exist and/or may become known at a future date and (b) will accrue on an ongoing basis between the filing of this Cure Claim Objection and any subsequent assumption of the Lease. Wal-Go expressly reserves its right to amend or supplement its Cure Claim Objection though and including the effective date of any proposed assumption and assignment of the Lease.

WHEREFORE PREMISES CONSIDERED, Wal-Go prays (i) that the cure amount set forth in the Cure Notice be corrected to reflect the correct prepetition cure amount of

\$54,808.20, which represents prepetition amounts due and owing under the Wal-Go Lease; (ii) that Wal-Go be paid a cure payment of \$54,808.20 in connection with the assumption of the Lease; and that (iii) Wal-Go be awarded such other and further relief to which it may be justly entitled at law or in equity.

Dated: January 25, 2019
San Antonio, Texas

RESPECTFULLY SUBMITTED,

LANGLEY & BANACK, INCORPORATED
745 E. Mulberry, Suite 900
San Antonio, Texas 78212
(210) 736-6600 Telephone
(210) 735-6889 Fax

By: /s/ David S. Gragg
David S. Gragg
State Bar No. 08253300
Natalie F. Wilson
State Bar No. 24076779

ATTORNEYS FOR WAL-GO ASSOCIATES
LLC

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2019, a true and correct copy of the foregoing document was electronically transmitted to the Clerk of the Court using the ECF System for filing and transmitted electronically to all ECF participants registered to receive electronic notice in the bankruptcy proceeding including the parties below:

DEBTORS

(served via attorneys)

DEBTORS' COUNSEL

(served electronically)

Weil, Gotshal & Manges LLP

767 Fifth Avenue

New York, NY 10153

Ray Schrock, Esq.: ray.schrock@weil.com

Jacqueline Marcus, Esq.: jacqueline.marcus@weil.com

Garrett A. Fail, Esq. garrett.fail@weil.com

Sunny Singh, Esq. sunny.singh@weil.com

Ellen J. Odoner, Esq. Ellen.Odoner@weil.com
Gavin Westerman, Esq. Gavin.Westerman@weil.com

RESTRUCTURING ADVISORS

M-III Partners, LP
130 West 42nd Street
17th Floor
New York, NY 10036
<https://miiipartners.com>
Phone: 212-716-1491
Fax: 212-531-4532
Colin M. Adams
Brian Griffith

Buyer Parties

Kunal S. Kamlani: kunal@eslinvest.com
Harold Talisman: harold@eslinvest.com

Counsel for Buyer Parties

Christopher E. Austin, Esq.: caustin@cgsh.com
Benet J. O'Reilly, Esq.: boreilly@cgsh.com
Sean A. O'Neal, Esq.: soneal@cgsh.com

Bank of America, N.A.
c/o Skadden, Arps, Slate, Meagher & Flom LLP
Attn: Paul D. Leake (Paul.Leake@skadden.com)
Attn: Shana A. Elberg (Shana.Elberg@skadden.com)
Attn: George R. Howard (George.Howard@skadden.com)
4 Times Square
New York, NY 10036

Bank of America, N.A.
c/o Berkeley Research Group, LLC
2200 Powell Street, Suite 1200
Emeryville, CA 94608

Wells Fargo Bank, National Association
c/o Choate, Hall & Stewart LLP
Attn: Kevin J. Simard (ksimard@choate.com)
Attn: Jonathan D. Marshall (jmarshall@choate.com)
Two International Place Boston, MA 02110

Akin Gump Strauss Hauer & Feld LLP
Attn: Philip C. Dublin (pdublin@akingump.com)
Attn: Ira S. Dizengoff (idizengoff@akingump.com)
Attn: Abid Qureshi (aqureshi@akingump.com)
Attn: Sara L. Brauner (sbrauner@akingump.com)

One Bryant Park New York, NY 10036

Transform Holdco LLC

c/o ESL Partners, Inc.

Attn: Kunal S. Kamalani (kunal@eslinvest.com)

Attn: Harold Talisman (harold@eslinvest.com)

1170 Kane Concourse, Suite 200 Bay Harbor Islands, FL 33154

Cleary Gottlieb Steen & Hamilton LLP

Attn: Christopher E. Austin (caustin@cgsh.com)

Attn: Benet J. O'Reilly (boreilly@cgsh.com)

Attn: Sean A. O'Neal (soneal@cgsh.com)

One Liberty Plaza New York, NY 10006

US TRUSTEE

(served electronically)

U.S. Federal Office Building

201 Varick Street, Suite 1006

New York, NY 10014

Paul Schwartzberg

Richard Morrissey

/s/ David S. Gragg

David S. Gragg

EXHIBIT A

LAKE VILLAGE SHOPPING CENTER

WARSAW, INDIANA # 134

CAM, REAL ESTATE TAX, AND INSURANCE RECONCILIATION

2017-PAY 2018 Spring & Fall Tax Bill

5110	CLEANING			DATE: December 6, 2018
5111	ELECTRICITY			
5112	REPAIR/LIGHTS			
5113	LOT REPAIR/SIDEWALK			TO: KMART #9122
5114	STRIPING/CRACKFILL			LAKE CITY HIGHWAY
5115	LAWN CARE			WARSAW, IN 46580
5116	SNOW REMOVAL			
5117	MISC.			FROM: Wal-Go Associates, L.L.C.
5118	TRASH REMOVAL			c/o Resource Commercial Real Estate, LLC
5124	SECURITY			9339 Priority Way West Drive, Suite 120
5125	REPAIRS GENERAL			Indianapolis, IN 46240
5126	REPAIRS SIGNAGE			ATTN: Ron Escue 317-460-8393
5129	PAINTING			
5310	WATER			
5317	FIRE PROTECTION			
5417	MANAGEMENT FEE	N/A	88908 s.f. divide by 170744 SF	
			Your prorata share	52.07%
			0.00 psf	
			FIXED CONTRIBUTION	
			M/E/P X -	0.00
	SUB TOTAL (CAM)	0.00		
	TOTAL CAM EXPENSE	0.00	TOTAL CAM DUE	

5710	INSURANCE LIABILITY			88908 s.f. divide by 170744 SF
	INSURANCE OTHER			Your prorata share 52.07%
	INSURANCE UMBRELLA			
	SUB TOTAL INSURANCE	0.00	0.00 psf	
	PLUS ADMINISTRATIVE	0.00	NOT APPLICABLE	0.00
			M/E/P/ 0 X 0.00 -	0.00
	TOTAL INSURANCE	0.00	TOTAL INSURANCE DUE	0.00

BILLED		PAID		
\$ 52,632.38	R.E. TAX (SPRING)	\$ 54,018.56	88908 s.f. divide by 170744 SF	
\$ 52,624.42	R.E. TAX (FALL)	\$ 51,238.24	Your prorata share	52.07%
\$ 105,256.80	SUB TOTAL (R.E. Tax)	\$ 105,256.80	0.62 psf	
			R.E. TAX CHARGE	\$ 54,808.20
	PLUS ADMINISTRATIVE	0.00	AMOUNT DUE	\$ 54,808.20
	TOTAL R.E. TAX	\$ 105,256.80	DEDUCTABLE % RENT 58% \$	31,788.78
			NOT DEDUCTABLE 42% \$	23,019.44
			TOTAL R.E. TAX DUE	\$ 54,808.20
			TOTAL CHARGES DUE	\$ 54,808.20
			Total Charges Due	\$ 54,808.20

SF- SQUARE FOOT
PSF- PER SQUARE FOOT
MEP- MONTHLY ESTIMATE PAYMENTS